



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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December 1, 2020

**By ECF**

Gabriel W. Gorenstein  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

**MEMORANDUM ENDORSEMENT**

Re: U.F. et ano. v. NYC Dep't of Educ.  
20 CV 7056 (AT) (GWG)

Dear Judge Gorenstein:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel, and I am assigned to represent the Defendant in the above referenced matter, wherein Plaintiff alleges that the New York City Department of Education (the DOE) has not fully reimbursed Plaintiff for private school tuition for the 2019/20 school year and an entitlement to attorney's fees and costs after an administrative hearing brought pursuant to the Individuals with Disabilities in Education Act (IDEA). I write to respectfully request that the settlement conference currently scheduled for Friday December 4, 2020 be adjourned until January 7, 2021, which I understand from Your Honor's Chambers would be an acceptable date should Your Honor grant this request, in order to allow the parties additional time to resolve the matter without further judicial intervention. Although Plaintiff declines to join in this request to adjourn the conference, I have conferred with counsel for Plaintiff, who is available to attend a conference telephonically on January 7, 2021 at 10:00 a.m., should the Court grant DOE's request.

By way of background, Plaintiff filed the original complaint on August 31, 2020, seeking the above relief. The Complaint has since been amended twice, most recently on November 16, 2020. Defendant DOE's response to the Second Amended Complaint was filed yesterday, November 30, 2020. DOE takes the position that the only substantive issue in this case is the payment of a portion of the tuition to the Plaintiff for private school enrollment for the 2019/20

school year. That payment has not yet been made because, until recently, the school had not provided sufficient information for the DOE to process a payment. Plaintiff also seeks attorney's fees.

Defendant DOE takes the position that a settlement conference would be premature at this time. The parties do not dispute that the parent of the Plaintiff student is entitled to some tuition reimbursement for the 2019/20 school year. The parties do not dispute that Defendant DOE has paid some tuition for the 2019/20 school year (approximately \$68,000) and that some additional tuition has not yet been reimbursed. The only (possible) factual dispute is the amount of the outstanding tuition payment for the period during the spring when many schools were completely or partially closed and, therefore, not providing the same educational services. In order to process additional payment, the DOE requires certain information from the private school. After my office reached out to Plaintiff's counsel to request that they obtain the necessary information from the school, the information was provided to the my office on November 3, 2020.

For the reasons articulated in DOE's November 30, 2020 pre-conference letter, Defendant respectfully requests that the settlement conference scheduled for December 4, 2020 be rescheduled for January 7, 2021. In sum, in light of the fact that 1) the sole substantive issue in this case involves only the administrative processing of a tuition payment; 2) the private school only recently provided the DOE with the necessary information to evaluate the appropriate amount of tuition reimbursement, due to recent coronavirus-related school closures; 3) Plaintiff amended the complaint only two weeks ago; and 4) I am still in the process of requesting and receiving approval from the Office of the Comptroller to make an offer of settlement on the issue of attorney's fees, Defendant respectfully submits that a settlement conference at this juncture is premature and unlikely to be fruitful.

This is Defendant's first request for an extension of time to adjourn the settlement conference. As noted above, Plaintiff declines to join in this request. I apologize that this request was not made at least 5 business days in advance of the scheduled conference. The delay was due, in part, to the recent Thanksgiving holiday and a mandatory furlough day for me on Friday November 27, 2020. Additionally, I was optimistic that the tuition issue might be resolved in advance of the conference. Ultimately, there was not sufficient time to do so, because of a backlog of IDEA fees and implementation cases, due to disruptions caused by the coronavirus and the attendant school closures. This extension of time, if granted, would not affect any other deadlines. Thank you for your consideration.

Respectfully yours,

/s/

Mark G. Toews

Assistant Corporation Counsel

**cc (via ECF):**  
Plaintiff's counsel

**The Court has considered the opposition to this request but strongly believes that it is pointless to hold a settlement conference unless both sides feel prepared to engage in settlement discussions. Accordingly, the application is granted and the settlement conference is adjourned to January 7, 2021 at 10:00 a.m. Submissions are due December 30, 2020. The defendant should of course make itself available to plaintiff for non-Court-supervised discussions in advance of the conference.**

So Ordered.

  
GABRIEL W. KORENSTEIN

United States Magistrate Judge

December 2, 2020